
City Council

NOTICE OF MOTION

MM31.3	ACTION			Ward: 28
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**Sony Centre, 1 Front Street East- Limiting Distance Agreement -
Councillor Saundercook, seconded by Councillor Moscoe**

- Notice of this Motion has been given.*
- This Motion is subject to referral to the Executive Committee. A two-thirds vote is required to waive referral.*
- This Motion has been deemed urgent.*

Recommendations

Councillor Saundercook, seconded by Councillor Moscoe, recommends:

1. That City Council agrees to enter into a limiting distance agreement (“Agreement”) with Ferncastle (Front Street) Inc. (“Ferncastle”) and the Board of Directors of the Hummingbird Centre for the Performing Arts with respect to a 57-storey residential condominium tower (“Tower”) at the Sony Centre, 1 Front Street East, pursuant to section 3.2.3.1 of Ontario Regulation 350/06 enacted pursuant to the Building Code Act, 1992, S.O. 1992, c. 23.
2. That the Agreement will provide that Ferncastle shall have the right to construct the Tower up to the property line between its lands and the Sony Centre site (“Site”) such that the required limiting distance for the exposed building faces on the north and east elevations of the Tower shall be measured to a point or points beyond the property line, which point or points shall be located on the remainder of the Site.
3. That the Agreement shall provide that Ferncastle shall not be required to pay compensation to the City pursuant to the limiting distance agreement.

Summary

Castlepoint Realty Partners Limited (“Castlepoint”), the Board of Directors of the Hummingbird Centre for the Performing Arts (“Board”) and the City entered into an agreement for the Sony Centre for the Performing Arts (“Sony Centre”) dated 31 July 2006 (“Umbrella Agreement”), to facilitate redevelopment of the Sony Centre. Pursuant to an Assignment, Assumption and Consent Agreement dated 24 March 2008, Castlepoint, with the consent of the City, appointed Ferncastle (Front Street) Inc. (“Ferncastle”) as its nominee and trustee for the purpose of the Umbrella Agreement.

The Umbrella Agreement gives Ferncastle certain ownership, leasehold and development rights for the Sony Centre. Ferncastle proposes to construct a residential development at the Sony Centre consisting of a 57-storey residential condominium tower (“Tower”) at the south-west corner of the site while retaining the majority of the existing building in its current form.

The Tower, after it is severed from the Sony Centre site (“Site”), will be at the new property lines without any setbacks. The Building Code requires minimum spatial separation of buildings where there are exposed or unprotected openings of buildings that face each other, for example, window openings. The Building Code requires prescribed separation between buildings based upon minimum or limiting distances between them. However, adjoining property owners may enter into a limiting distance agreement whereby one property owner agrees that the adjoining property owner may build closer to the property line than prescribed by the Building Code and the other owner will maintain the prescribed distance between the buildings by not building as close to the property line as he/she could legally have built to.

Where the City has been involved with limiting distance agreements affecting its lands, usually where a developer wishes to build its building at the property line abutting a public park, the City conducts an appraisal and requires financial compensation from the developer for the release of potential development rights by the City with respect to the parkland.

The Board has passed a resolution requesting that City Council enter into a limiting distance agreement with Ferncastle whereby Ferncastle may build up to the property line without paying the City any compensation. The Umbrella Agreement provides for a comprehensive redevelopment of the Site. The strip of land on the Site that the City would not be able to build upon because of the limiting distance agreement would be difficult to value because any development on the Site would be limited because of the heritage features of the Sony Centre itself. Redevelopment by the City would not be contemplated in the foreseeable future for the Site assuming the preservation of the Sony Centre and the existence of the new Tower next to it. It could be argued that the City is not giving up any development rights because the Tower to be constructed, as a result of the Umbrella Agreement, would constitute development of the Site.

(Submitted to City Council on February 23 and 24, 2009 as MM31.3)